IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.597 OF 2005

Smt.Nanda w/o Jotiba Nakadi and Ors. ..Appellants
Versus
Shri Ningo Apu Patil and Ors. ..Respondents

Mr.V.S.Kokitkar for appellants
Mr.G.N.Salunkhe for respndent Nos.1(ii) to 1(iv)

CORAM : P.V.KAKADE, J.

DATE : 24TH AUGUST, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by Addl. District Judge, Gadhinglaj dated 8.7.2004 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Chandgad dismissing the plaintiffs suit.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The plaintiffs have filed the suit for cancellation of the sale deed dated 19.6.1987 and for

possession of the suit land and for mesne profits. The plaintiffs came with the case that the suit sale deed was fraudulently obtained by the defendant and infact it was not a legal necessity of the deceased Jotiba husband of the present plaintiff no.1. The defendant contested the suit, inter alia, submitting that the said transaction between Jotiba and himself was legal and proper and it was indeed for legal necessity and as such the suit was sought to be dismissed.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that infact the sale transaction was for legal necessity and the suit sale deed was not fraudulently obtained by the defendant and as such the suit came to be dismissed. The appeal was carried to the District Court. The Addl. District Judge after hearing both the sides concurred with the findings recorded by the lower court and dismissed the appeal. Hence the present appeal.

4. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. The evidence on record was sufficient to show that there was no fraud committed by the defendant

at the time of execution of the sale deed, and in fact there was legal necessity for deceased Jotiba to execute the sale deed of the suit property and in this regard it must be noted that the issues of facts involved are adjudicated by both the courts below on recording concurrent findings to the effect that it was not proved that the sale transaction was obtained by playing fraud. It was also proved that the sale transaction was executed for legal necessity of the family of the plaintiffs and as such the suit came to be dismissed. It was further submitted on behalf of the appellant that as per the record the suit property was impartible and un-alienable being allotted to Umaji Khachu Nakadi on some restricted tenure in the year 1941-42 and therefore, permission of Collector was necessary prior to sell-mortgage or any kind of transfer. However, the learned appellate court judge has rightly observed that, if it was so, the revenue authority could be moved proper action. However, the issues involved in the suit were whether the sale deed was fraudulently obtained or not or it was for legal necessity? Under the circumstances, I do not see any reason why the second appeal should be entertained, as it does not involve any substantial question of law. In vie w of this

position

the appeal stands dismissed with no order as to costs.